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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/665,158	09/22/2003	Toru Taniguchi	117228	6340
25944	7590	10/05/2005	EXAMINER	
OLIFF & BERRIDGE, PLC P.O. BOX 19928 ALEXANDRIA, VA 22320			COOLEY, CHARLES E	
			ART UNIT	PAPER NUMBER
			1723	
DATE MAILED: 10/05/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/665,158	Applicant(s) TANIGUCHI, TORU	
	Examiner Charles E. Cooley	Art Unit 1723	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
 4a) Of the above claim(s) 2-4 and 8-19 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1 and 5 is/are rejected.
- 7) ☒ Claim(s) 6 and 7 is/are objected to.
- 8) ☒ Claim(s) 1-19 are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 September 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

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NON-FINAL OFFICE ACTION

1. This application has been assigned to Technology Center 1700, Art Unit 1723 and the following will apply for this application:

Please direct all written correspondence with the correct application serial number for this application to Art Unit 1723.

Telephone inquiries regarding this application should be directed to the Electronic Business Center (EBC) at <http://www.uspto.gov/ebc/index.html> or 1-866-217-9197 or to the Examiner at (571) 272-1139. All official facsimiles should be transmitted to the centralized fax receiving number 571-273-8300.

Election/Restriction Requirement

2. Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-16, drawn to an agitation apparatus, classified in class 366, subclass 118.
- II. Claims 17-19, drawn to a method of mixing, classified in class 366, subclass 179.1.

The inventions are distinct, each from the other because of the following reasons:

3. Inventions II and I are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case, the process as claimed can be practiced by another materially

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different apparatus such as by an apparatus lacking a divider plate or a powder inlet duct attached to the powder inlet.

4. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification and because the search required for each group is a divergent search, restriction for examination purposes as indicated is proper.

5. This application contains claims directed to the following patentably distinct species of the claimed invention:

Species A: Figures 1 and 2;

Species B: Figure 3;

Species C: Figure 5;

Species D: Figures 6, 7, and 8;

Species E: Figure 9;

Species F: Figures 10A and 10B; and

Species G: Figures 11A and 11B.

6. Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claim 1 is generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim

is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

7. During a telephone conversation with Daniel Tanner on 27 SEP 2005 a provisional election was made with traverse to prosecute the invention of Group I, claims 1-16 and Species E - Figure 9. Affirmation of this election must be made by applicant in replying to this Office action. Applicant stated claims 1 and 5 read on the elected group and species, with claim 1 being generic. However, the examiner notes claims 6 and 7 depend from elected claim 5 and read on the elected species, thus claims 1 and 5-7 will be treated on the merits. Claims 2-4 and 8-19 are thereby withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

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Priority

8. Receipt is acknowledged of papers (three priority documents) submitted under 35 U.S.C. § 119, which papers have been placed of record in the file.

Information Disclosure Statement

9. Note the attached PTO-1449 form(s) submitted with the Information Disclosure Statement filed 22 SEP 2003 and 24 JUN 2004.

Drawings

10. The drawings are objected to under 37 CFR § 1.83(a) since the drawings must show every feature of the invention specified in the claims. Therefore, the following features must be shown or the features canceled from the claims. No new matter should be entered.

- a. the subject matter of claim 7 is not shown in Fig. 9.

11. The drawings are objected to because of the following informalities:

- a. flow holes 78 are not labeled in Fig. 9 - see page 29, line 11.

- b. the drawing Figures 4A-4D lack appropriate reference characters and lead lines to identify the illustrated elements (37 CFR 1.84(p)(q)).

- c. the drawings contain improper sectional views. The plane upon which a sectional view is taken should be indicated on the view from which the section is cut by a broken line. The ends of the broken line should be designated by Arabic or Roman numerals corresponding to the view number of the sectional view, and

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should have arrows to indicate the direction of sight (37 CFR 1.84(h)(3)).

Correction is required.

For example, Figure 7 should be a sectional view taken along line 7-7 in Figure 6 (not sectional line A-A') and Figure 8 should be a sectional view taken along line 8-8 in Figure 6. All sectional views should be corrected in accordance with 37 CFR 1.84(h)(3).

Applicant should also ensure a proper one-to-one correspondence between the specification and drawings in accordance with MPEP 608.01(g) and 37 CFR 1.84(f). The brief description of the drawings and the descriptive portion of the specification require revision in accordance with the above drawing objections.

Correction is required.

12. Applicant should verify that (1) all reference characters in the drawings are described in the detailed description portion of the specification and (2) all reference characters mentioned in the specification are included in the appropriate drawing Figure(s) as required by 37 CFR 1.84(p)(5).

INFORMATION ON HOW TO EFFECT DRAWING CHANGES

Replacement Drawing Sheets

Drawing changes must be made by presenting replacement figures which incorporate the desired changes and which comply with 37 CFR 1.84. An explanation of the changes made must be presented either in the drawing amendments, or remarks, section of the amendment. Any replacement drawing sheet must be identified in the top margin as "Replacement Sheet" (37 CFR 1.121(d)) and include all of the figures appearing on the immediate prior version of the sheet, even though only one figure may be amended. The figure or figure number of the amended drawing(s) must not be labeled as "amended." If the changes to the drawing figure(s) are not accepted by the examiner, applicant will be notified of any required corrective action in the next Office action. No further drawing submission will be required, unless applicant is notified.

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Identifying indicia, if provided, should include the title of the invention, inventor's name, and application number, or docket number (if any) if an application number has not been assigned to the application. If this information is provided, it must be placed on the front of each sheet and centered within the top margin.

Annotated Drawing Sheets

A marked-up copy of any amended drawing figure, including annotations indicating the changes made, may be submitted or required by the examiner. The annotated drawing sheets must be clearly labeled as "Annotated Marked-up Drawings" and accompany the replacement sheets.

Timing of Corrections

Applicant is required to submit acceptable corrected drawings within the time period set in the Office action. See 37 CFR 1.85(a). Failure to take corrective action within the set period will result in ABANDONMENT of the application.

If corrected drawings are required in a Notice of Allowability (PTOL-37), the new drawings MUST be filed within the THREE MONTH shortened statutory period set for reply in the "Notice of Allowability." Extensions of time may NOT be obtained under the provisions of 37 CFR 1.136 for filing the corrected drawings after the mailing of a Notice of Allowability.

Specification

13. The specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

14. The disclosure is objected to because of the following informalities:

a. Page 15, line 24 contains two words lacking a space therebetween.

Appropriate correction is required.

15. The abstract is acceptable.

16. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed (MPEP 606.01).

Claim Objections

17. Claim 7 is objected to because "said inlet duct" is not set forth in previous claims
- it is assumed to be one of the inlets recited in claim 1.

Correction is required.

Claim Rejections - 35 USC § 102

18. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

19. **Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Fenske et al. (US 2,667,407).**

The patent to Fenske et al. discloses an agitation apparatus in Figs. 1-2 as seen below comprising a casing 1; agitation body with a shaft 9 connected to vibration source 12, 13; blades 7, 8 on the shaft with blades 8 being apertured at 11 - Fig. 2; openings 15-18 into the casing capable of being employed as either inlets and/or outlets; agitating chambers 4 separated by divider plates 2 along the length of the casing 1; the upper or the lower chamber (proximate 6 or 9 in Fig. 1) may be termed a pre-agitation chamber to which the openings 15, 17 or 16, 18 are attached; the blades inherently being capable of being changed - note the blades 7 and 8 are configured differently.

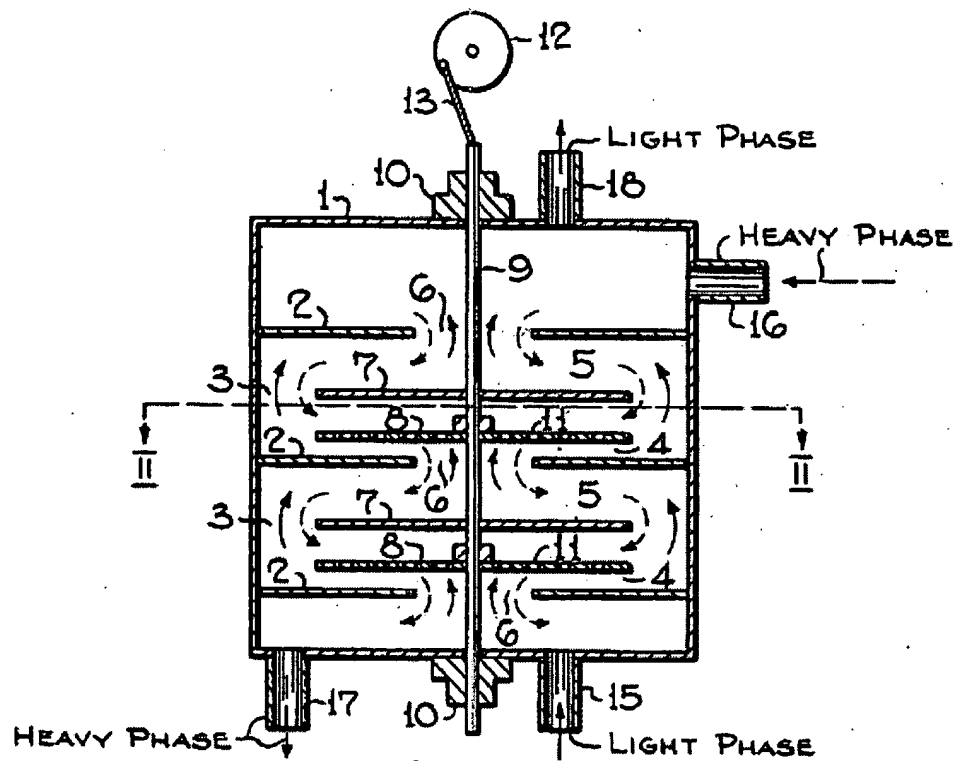


FIG.-1

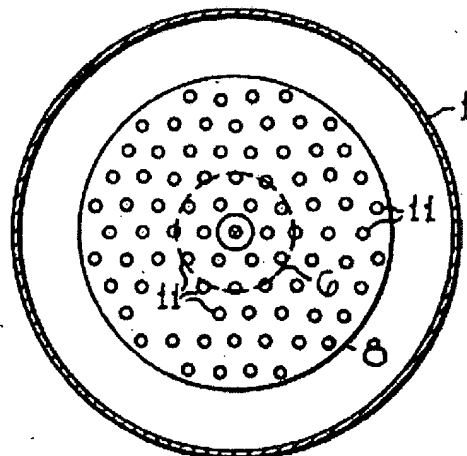
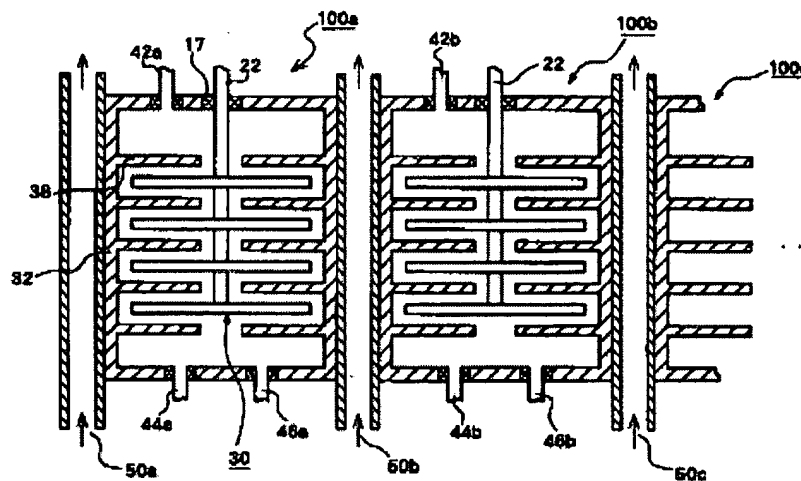


FIG.-2

20. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by JP 2001-239140.

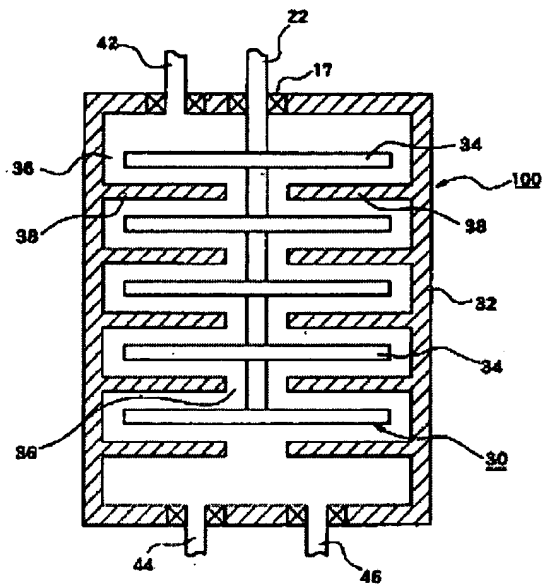
JP 2001-239140 discloses an agitation apparatus throughout the Figures including but not limited to the Figures seen below comprising a casing 100a or 100b or 32; agitation body with a shaft 22 connected to a vibration source (per the abstract); blades 30 or 34 on the shaft; openings 42a, 44a, 45a or 42b, 44b, 46b or 42-46 into the casing capable of being employed as either inlets and/or outlets (and note Fig. 23); agitating chambers separated by divider plates 38 along the length of the casing; the lower chamber may be termed a pre-agitation chamber to which the openings 44a, 45a or 44b, 46b or 44, 46 are attached; the blades inherently being capable of being changed.

【図10】

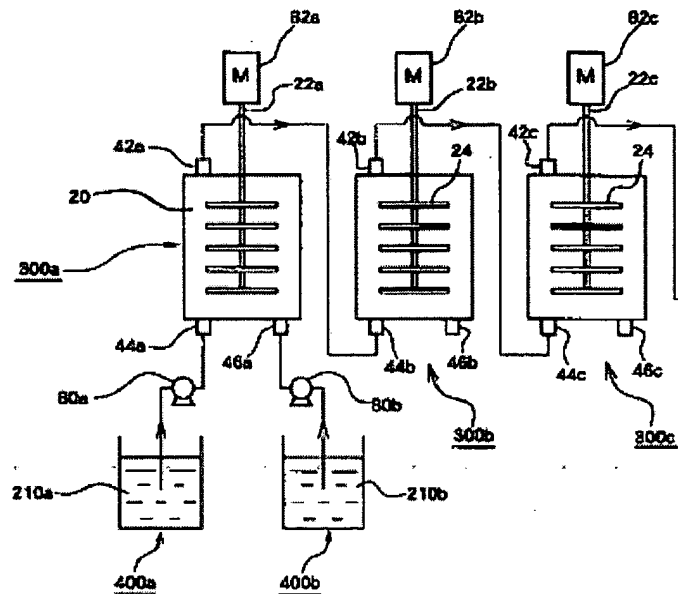


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【図9】



【図23】

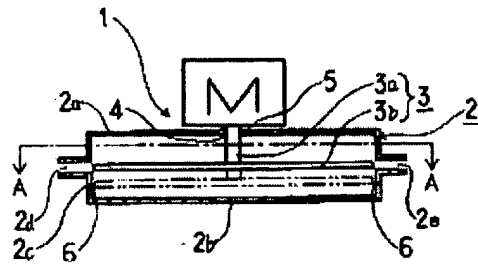


21. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by JP 11-169697.

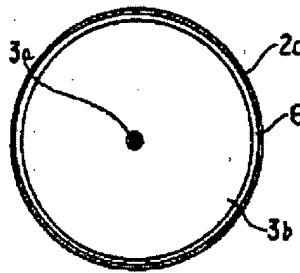
JP 11-169697 discloses an agitation apparatus throughout the Figures including but not limited to the Figures seen below comprising a casing 12; agitation body with a shaft 3a or 13a connected to a vibration source M; blades 3b or 13b on the shaft; openings 2d, 2e, 7 into the casing capable of being employed as either inlets and/or outlets; agitating chambers separated by divider plates along the length of the casing as seen in the Figures; the upper or lower chamber may be termed a pre-agitation chamber to which the openings 2e, 7 or 2d, 7 are attached; the blades inherently being capable of being changed.

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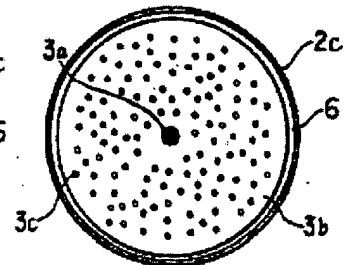
【図1】



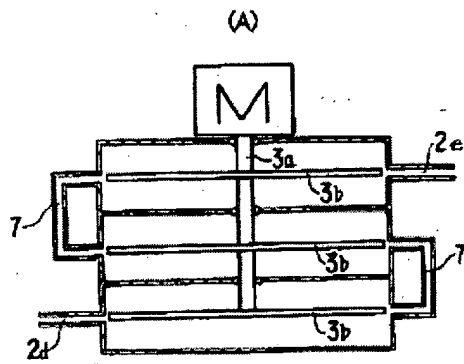
【図2】



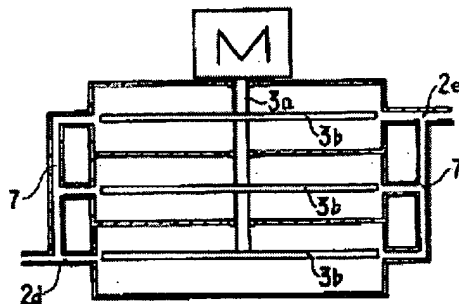
【図3】



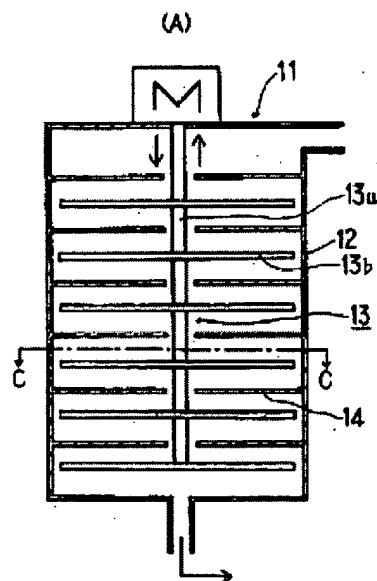
【図4】



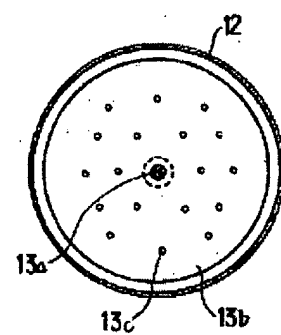
(B)



【図5】



(B)



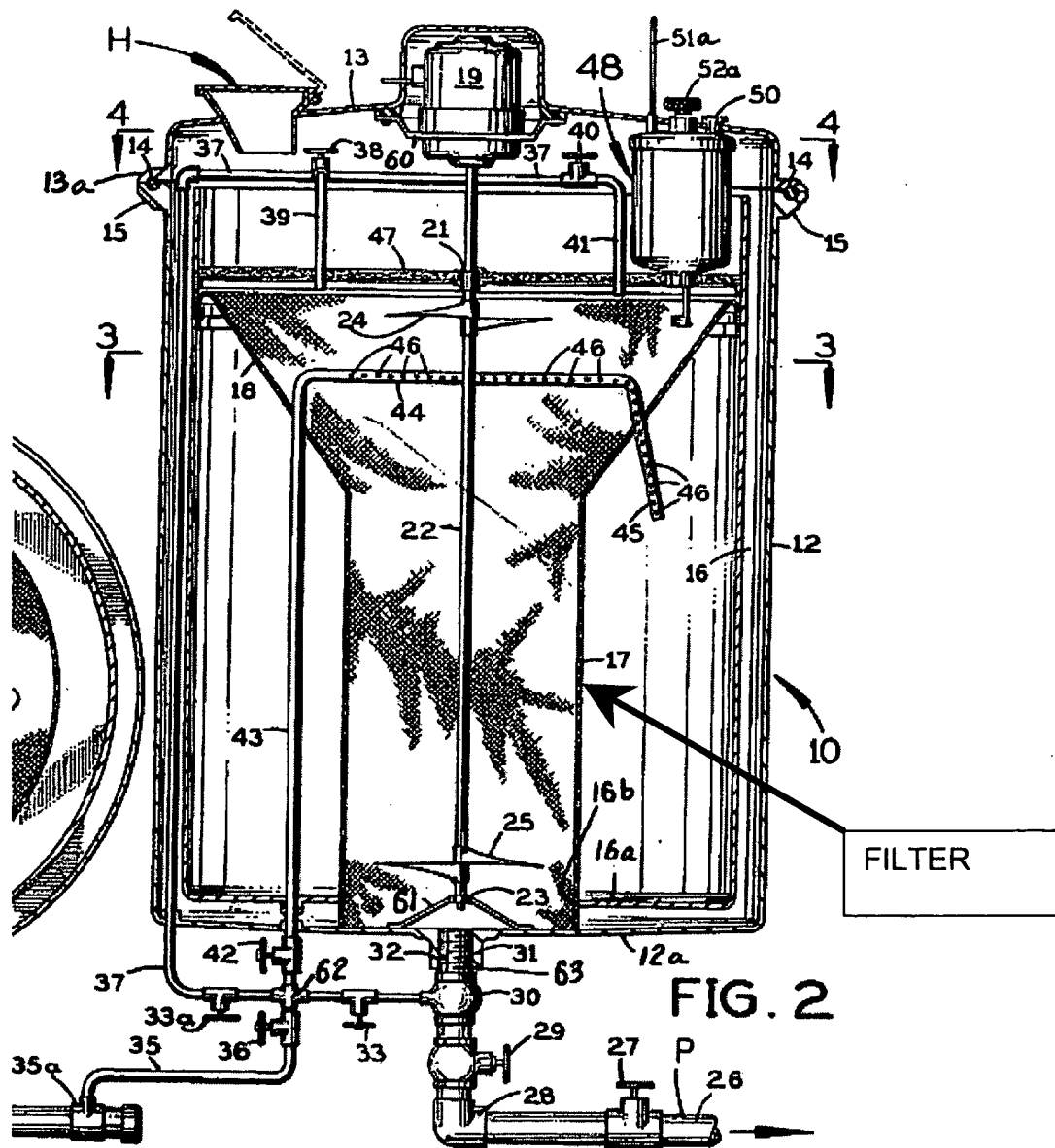
Claim Rejections - 35 USC § 103

22. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

23. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fenske et al. (US 2,667,407), JP 2001-239140 or JP 11-169697 in view of King (US 4,099,267).

Fenske et al. (US 2,667,407), JP 2001-239140 or JP 11-169697 do not disclose a filter enclosing the agitation body. The patent to King discloses a casing 12 having an agitating body with a shaft 22 and blade 25 thereon wherein the agitation body is enclosed by a filter 17. It would have been obvious to one having ordinary skill in the art, at the time applicant's invention was made, to have provided the casings of Fenske et al. (US 2,667,407), JP 2001-239140 or JP 11-169697 with a filter therein enclosing the agitation body as disclosed by King for the purpose of preventing undissolved solids from passing therethrough (col. 4, lines 62-65).



Allowable Subject Matter

24. Claims 6-7 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

25. The following is an Examiner's statement of reasons for the indication of allowable subject matter:

The prior art of record does not teach or fairly suggest the drain port and valve arrangement of claim 6.

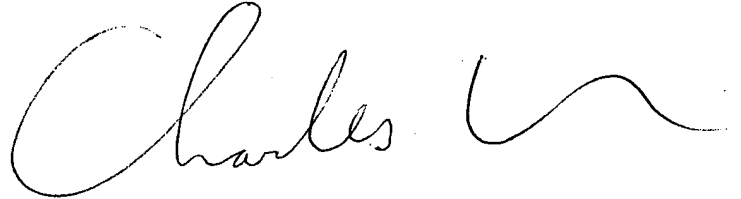
Conclusion

26. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

27. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles E. Cooley whose telephone number is (571) 272-1139. The examiner can normally be reached on Mon-Fri. All official facsimiles should be transmitted to the centralized fax receiving number 571-273-8300.

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28. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in cursive script, appearing to read "Charles E. Cooley", followed by a large, stylized flourish.

Charles E. Cooley
Primary Examiner
Art Unit 1723

28 SEP 2005